

<sup>1</sup> The record on appeal includes evidence submitted after the Office issued the March 29, 2004 decision. The Board may not consider evidence that was not before the Office at the time it rendered its final decision. 20 C.F.R. § 501.2.

### **FACTUAL HISTORY**

On December 16, 2003 appellant, a 42-year-old screener, filed a traumatic injury claim alleging that on December 15, 2003 she slipped on ice and fell while walking from the parking facility to the airport terminal. Appellant claimed injuries to her head, neck and back as a result of the fall. She stopped work the day of her alleged injury and returned to limited-duty work on January 18, 2004.

Appellant was treated in the Hartford Hospital emergency room on December 15, 2003. The treatment records noted that appellant slipped and fell on ice that day and reportedly struck her head. She complained of head, neck and lower back pain. An x-ray of the cervical spine was normal and appellant was discharged that same day with a diagnosis of musculoskeletal pain.

A December 16, 2003 attending physician's report (Form CA-16) from Dr. Julian Parsons, a Board-certified internist, noted findings of head, neck and back pain, but did not otherwise provide a diagnosis or specifically attribute appellant's condition to the reported fall. Dr. Parsons further indicated that appellant was totally disabled through December 29, 2003 and she would be able to resume light-duty work thereafter. Dr. Parsons also provided a January 21, 2004 work capacity evaluation (Form OWCP-5c), which noted that appellant could work full time, but was restricted in using her left arm. Appellant also submitted physical therapy progress notes for the period December 22, 2003 to February 11, 2004.

On February 27, 2004 the Office requested that appellant submit additional factual and medical evidence. The Office noted, among other things, that a firm diagnosis relating to the December 15, 2003 alleged injury had not yet been provided. The Office explained that pain was a symptom and not a diagnosis of a medical condition. Appellant was afforded 30 days to submit the requested information.

On March 1, 2004 the Office received additional physical therapy progress notes for February 18 and 20, 2004. On March 29, 2004 the Office received the additional factual information it had requested as well as a March 22, 2004 medical report from Dr. Parsons.

In a decision dated March 29, 2004, the Office denied appellant's claim. The Office stated that, while the evidence supported that the claimed event occurred, there was no medical evidence that provided a diagnosis which could be causally connected to the December 15, 2003 event. The Office further noted that appellant had been advised of the deficiencies in her claim on February 27, 2004 and that she responded by submitting physical therapy notes for February 18 and 20, 2004. This evidence, however, was deemed insufficient because it did not include a physician's medical diagnosis.

### **LEGAL PRECEDENT**

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee

actually experienced the employment incident that is alleged to have occurred.<sup>2</sup> The second component is whether the employment incident caused a personal injury.<sup>3</sup> Causal relationship is a medical question that generally can be resolved only by rationalized medical opinion evidence.<sup>4</sup>

### **ANALYSIS**

On February 27, 2004 the Office requested additional factual and medical evidence in support of appellant's claimed December 15, 2003 traumatic injury. Appellant submitted additional physical therapy progress notes, a March 24, 2004 statement and a March 22, 2004 report from Dr. Parsons. The Office received the physical therapy notes on March 1, 2004. Appellant's March 24, 2004 statement and Dr. Parsons' latest report were received on March 29, 2004, the same date the Office issued its decision. The March 29, 2004 decision listed the February 18 and 20, 2004 physical therapy notes as the only evidence submitted in response to the Office's February 27, 2004 request for additional evidence.

The Board's jurisdiction over a case is limited to reviewing the evidence that was before the Office at the time of its final decision.<sup>5</sup> Inasmuch as the Board's decisions are final as to the subject matter appealed, it is crucial that all relevant evidence that was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.<sup>6</sup> In this instance, the Office neglected to consider appellant's statement and Dr. Parsons' March 22, 2004 report, which it received on March 29, 2004. Whether the Office receives relevant evidence on the date of the decision or several days prior, such evidence must be reviewed by the Office.<sup>7</sup> As the Office failed to address all the relevant evidence before it at the time of its March 29, 2004 decision, the case is remanded for a proper review of the evidence and issuance of an appropriate final decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>4</sup> *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id.*

<sup>5</sup> 20 C.F.R. § 501.2(c).

<sup>6</sup> 20 C.F.R. § 501.6(c); *see William A. Couch*, 41 ECAB 548, 553 (1990).

<sup>7</sup> *Willard McKennon*, 51 ECAB 145 (1999).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 29, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further consideration consistent with this decision.

Issued: September 1, 2004  
Washington, DC

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
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A. Peter Kanjorski  
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